

FIRST REGULAR SESSION

HOUSE BILL NO. 156

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PHILLIPS, REINHART, ERVIN, BAKER, MUCKLER,
CUNNINGHAM (86) (Co-sponsors), MYERS, DEMPSEY, BEARDEN, EMERY, HUNTER,
LUETKEMEYER, MOORE, PURGASON, ICET, BIVINS, BRINGER, SANDER (22), YAEGER,
MORRIS, MEINERS AND COOPER (155).

Read 1st time January 9, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0545L.01I

AN ACT

To repeal section 188.039, RSMo, and to enact in lieu thereof two new sections relating to informed consent for abortion.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 188.039, RSMo, is repealed and two new sections enacted in lieu
2 thereof, to be known as sections 188.039 and 188.043, to read as follows:

188.039. 1. [No physician shall perform an abortion unless, prior to such abortion, the
2 physician certifies in writing that the woman gave her informed consent, freely and without
3 coercion, after the attending physician had informed her of the information contained in
4 subsection 2 of this section and shall further certify in writing the pregnant woman's age, based
5 upon proof of age offered by her.

6 2. In order to insure that the consent for an abortion is truly informed consent, no
7 abortion shall be performed or induced upon a pregnant woman unless she has signed a consent
8 form that shall be supplied by the state department of health, acknowledging that she has been
9 informed by the attending physician of the following facts:

10 (1) That according to the best medical judgment of her attending physician whether she
11 is or is not pregnant;

12 (2) The particular risks associated with the abortion technique to be used;

13 (3) Alternatives to abortion shall be given by the attending physician.

14 3. The physician may inform the woman of any other material facts or opinions, or

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 provide any explanation of the above information which, in the exercise of his best medical
16 judgment, is reasonably necessary to allow the woman to give her informed consent to the
17 proposed abortion, with full knowledge of its nature and consequences.] **Except in the case of**
18 **medical emergency, no person shall perform or induce an abortion unless, at least twenty-**
19 **four hours prior thereto, the treating physician has conferred with the patient and**
20 **discussed with her the indicators and contra-indicators for the proposed procedure or drug**
21 **or drugs in light of her medical history and medical condition. For an abortion induced**
22 **by a drug or drugs, such conference shall take place at least twenty-four hours prior to the**
23 **writing or communication of the first prescription for such drug or drugs in connection**
24 **with inducing an abortion. Only one such conference shall be required before prescribing**
25 **two or more drugs which are intended to be used serially or in combination to induce and**
26 **complete one abortion. The patient shall be screened prior to or during the conference for**
27 **risk factors, including any physical, psychological or situational factors which would**
28 **predispose the patient to, or increase the risk of, experiencing one or more adverse**
29 **physical, emotional or other health reactions to the proposed procedure or drug or drugs,**
30 **in either the short or long term, as compared with women who do not possess such risk**
31 **factors. At the end of the conference, the treating physician shall sign, and shall cause the**
32 **patient to sign, a written statement certifying that such screening and discussion has been**
33 **performed and that the woman gave her informed consent, freely and without coercion,**
34 **after the physician had discussed with her the indicators and contra-indicators of the**
35 **proposed procedure or drug or drugs in light of her medical history and medical condition.**
36 **All such executed statements shall be maintained as part of the patient's medical file,**
37 **subject to the confidentiality laws and rules of this state.**

38 **2. The director of the department of health shall disseminate a model form that**
39 **physicians may use as the written statement required by this section, but any lack or**
40 **unavailability of such a model form shall not affect the duties of the physician set forth in**
41 **subsection 1 of this section.**

42 **3. For purposes of this chapter, the following terms mean:**

43 **(1) "Medical emergency", a condition which, on the basis of the physician's good**
44 **faith clinical judgment, so complicates the medical condition of a pregnant woman as to**
45 **necessitate the immediate abortion of her pregnancy to avert her death or for which a**
46 **delay will create a serious risk of substantial and irreversible impairment of a major bodily**
47 **function;**

48 **(2) "Perform", includes the term induce.**

188.043. 1. No person shall perform an abortion unless such person has furnished
2 and maintained proof of financial responsibility to the department of health and senior

3 services pursuant to this section.

4 **2. For purposes of this section, proof of financial responsibility shall consist of one**
5 **of the following:**

6 **(1) The filing with the department of health and senior services of a written**
7 **certificate of an insurance carrier authorized to transact business in this state certifying**
8 **that a medical malpractice insurance policy is in effect with limits of not less than five**
9 **thousand dollars per occurrence and one million dollars in the annual aggregate, as to**
10 **which the person is required to furnish proof of financial responsibility as an insured; or**

11 **(2) The filing with the department of health and senior services of a bond of surety**
12 **company authorized to transact business in this state, conditioned for payments in amounts**
13 **and under the same circumstances as are required in a medical malpractice insurance**
14 **policy pursuant to subdivision (1) of this subsection, as to which the person required to**
15 **furnish proof of financial responsibility is a principal; or**

16 **(3) The filing with the department of health and senior services of a certificate of**
17 **the state treasurer that the person named therein has deposited with the state treasurer**
18 **cash in the amount of five hundred thousand dollars or bonds of the United States or the**
19 **state of Missouri of a market value not less than five hundred thousand dollars; provided**
20 **however, that the state treasurer shall not accept any such deposit and issue a certificate**
21 **therefor and the department of health and senior services shall not accept any such**
22 **certificate unless accompanied by evidence that no unsatisfied judgment against the**
23 **depositor exists. Such deposit shall be held by the state treasurer to satisfy any execution**
24 **on a judgment issued against the depositor for damages arising out of the death or injury**
25 **of any person as a result of negligence or malpractice in rendering professional services in**
26 **connection with an abortion.**

27 **4. (1) The insured under a medical malpractice insurance policy certified pursuant**
28 **to this section shall file annually with the department of health and senior services a**
29 **certificate of the insurance carrier that the policy remains in force or has been renewed**
30 **without any decrease in coverage below the minimum limits required in this section. The**
31 **principal of a surety bond shall file annually with the department of health and senior**
32 **services a certificate of the surety company that the bond remains in force and effect**
33 **without any decrease in the amount of the bond below the minimum amounts required in**
34 **this section.**

35 **(2) No insurer or surety shall cancel a medical malpractice insurance policy or**
36 **surety bond that provides financial responsibility pursuant to subsection 2 of this section**
37 **except after ten days' notice to the director of the department of health and senior services.**

38 **(3) A depositor shall not withdraw a deposit with the state treasurer made pursuant**

39 to this section, or any portion thereof, without furnishing to the state treasurer a certificate
40 of the department of health and senior services certifying that the depositor has furnished
41 proof of financial responsibility with the department pursuant to subdivision (1) or (2) of
42 subsection 2 of this section.

43 **5. No abortion facility or hospital shall employ or engage the services of a person**
44 **to perform one or more abortions if such person fails to furnish or maintain proof of**
45 **financial responsibility pursuant to this section.**

46 **6. For purposes of this section, "medical malpractice insurance" shall have the**
47 **same meaning as such term is defined in section 386.150, RSMo.**

48 **7. The director of the department of health and senior services shall promulgate**
49 **rules to implement the provisions of this section. No rule or portion of a rule promulgated**
50 **under the authority of this section shall become effective unless it has been promulgated**
51 **pursuant to chapter 536, RSMo.**

52 **8. The provisions of this section shall become effective January 1, 2004.**